

TOWN OF CORNWALL

PLANNING BOARD

September 3, 2013

MEMBERS PRESENT: NEIL NOVESKY, CHAIRMAN
WILLIAM GRABE
MICHAEL LO BLANCO
WYNN GOLD
RICHIE BISCHOFF
KENN BRODMERKEL

ALSO PRESENT: DOMINIC CORDISCO, ESQ.
PLANNING BOARD ATTORNEY

LESLIE DOTSON
PLANNING BOARD CONSULTANT

JOHN E. SZAROWSKI, P.E.
PLANNING BOARD ENGINEER

GARY VINSON
BUILDING INSPECTOR

ABSENT: LED KLOSKY

MEETING AGENDA:

1. Holloran Road Property #2012-07
2. Jones Farm #2013-02

REGULAR MEETING:

MR. NOVESKY: All present with the exception of Mr. Klosky, Mr. Brodmerkel chose to surprise us all with his attendance. With that, Fran, we'll bring the meeting to order at 7:00.

CORRESPONDENCE

CORNWALL COMMONS EXTENSION

MR. NOVESKY: Correspondence, we have a request from Cornwall Commons for the extension. Dominic, does that require a vote?

MR. CORDISCO: No. Actually, the board request came in just under the wire for last month's meeting and the board acted on it at last month's meeting so we did that.

LETTER FROM NANCY LEWITT

MR. NOVESKY: On the Nancy Lewitt letter, do we need to take any action?

MR. CORDISCO: No action as far as I can see.

LETTER FROM VILLAGE PLANNING BOARD

MR. NOVESKY: Dominic, did you have a chance to read that note from the Village Planning Board?

MR. CORDISCO: Yes. The Village sent you notice of public hearing that's going to be held on September 17 regarding a two lot subdivision of lands of Marla Hanson Howell and the reason why as far as I can tell that they sent you this is because they required under the General Municipal Law Section 239 (n) (n) I believe which requires the municipality to notify another municipality of subdivision application when it's within 500 feet of the municipal border.

MR. VINSON: The property's also in the town.

MR. NOVESKY: Gary, would you take that information back and acknowledge in the minutes that you were duly notified?

MR. VINSON: Duly notified.

MR. CORDISCO: I don't know if the board has any comments or concerns. Certainly you can appear at the September 17 public hearing.

MR. NOVESKY: Anybody want to appear at the Marla Hanson subdivision in the Village? Going once, going twice, nobody wants to attend, okay, done.

LETTER FROM MICHAEL BLYTHE, ESQ.

MR. NOVESKY: We have a letter from Mr. Michael Blythe, I'd like to put into the record on an issue regarding the \$30,000 cash bond for security. Dominic, do you want to address that?

MR. CORDISCO: Yes. Mr. Blythe is writing to request that the board consider releasing one of the conditions of his 2007 subdivision approval. In 2007, I believe Mr. Blythe received subdivision approval to subdivide two lots in the Town of Cornwall at the same time that it was also subdividing his property in the Town of New Windsor which is directly adjacent to this. The design of those plans done by Greg Shaw I believe requires that a private road with a cul-de-sac be created. That private road with cul-de-sac has not yet been built and in order to file the subdivision plat and create the lots Mr. Blythe posted a \$30,000 cash bond with the Town of Cornwall which has been sitting with the Town of Cornwall since that time. He's been unable to sell these lots and he's asking that the board consider releasing the \$30,000 cash bond. I think we discussed concerns with it but that's essentially a summation of his letter.

MR. NOVESKY: And in terms of the planning board's authority and what's necessary in terms of our position on it, what advice do you have?

MR. CORDISCO: Yes, this requires a couple steps. First of all, like since this was a condition of the planning board's approval, the planning board would have to consent to remove this condition. My concern is is that if Mr. Blythe was to sell any one of these lots that a purchaser of the lot may not know at present time if without saying something without recording something in chain of title may not know that there's a need to construct the road or place a bond for the construction of the road. And the board has on other applications considered the fact that the subdivision may be created now where the public road or private road improvement are not going to be constructed now but at some future date in time. The board could in my opinion consent to the release of the \$30,000 cash bond conditioned on a declaration being recorded in the chain of title so that any future purchaser would know that the road would need to be improved and a bond would need to be posted prior to

the issuance of a building permit. So that would potentially address that issue in my opinion it would. However, this board can't on its own consent to the release of the bond. It would need to be a town board action since the bond itself is held by the town board not by the planning board. So I think that if you were inclined to consider Mr. Blythe's request the first thing that you could consider would be to require that a declaration be recorded and recommend to the town board but it would be ultimately the town board's decision.

MR. NOVESKY: Okay, Kenn had a question.

MR. BRODMERKEL: If I could, did I hear Gary say that he was responsible to improve the current driveway into a road and he hasn't done that yet?

MR. VINSON: As a part of the subdivision, a private road is required to be constructed. That private road would access two parcels in Cornwall, two parcels in New Windsor. Presently, he bulldozed the old Bethlehem Art Gallery and he improved that parcel with his house that he currently lives in now. He's indicating that he doesn't anticipate building on these lots and he's looking to get the money that he had to put in for the road back. I don't, I'm not in favor of it but I'm just trying to explain to you what the situation is.

MR. BRODMERKEL: It's no big deal. So at this point in time, he's saying he doesn't expect to be able to sell them so if he withdraws his application for a subdivision he can have his money back?

MR. CORDISCO: Well, the application is already approved, subdivision has been granted, the lots have been created.

MS. DOTSON: That's what troubles me.

MR. NOVESKY: Can't he eliminate the lot lines?

MR. VINSON: Well, if you tell him that he's not going to want to because the zoning went from one to two acres.

MS. DOTSON: That's what troubles me is that the whole reason for it used to be because when people would have private road subdivisions they'd have an open development area. You got to the point where you would

require them to actually build a road before you even approved the subdivision because people weren't doing it and it created a problem for Gary because there wasn't the private road improvement without which there was no reason, there was no road frontage. It got to a point where you would allow people to bond it understanding that it was a pretty expensive improvement and they might not want to build it all at once but this is kind of getting back it seems to me to the bad old days of people having filed a subdivision that relies on certain improvements that aren't in evidence. And it seems to me it's back to either you build it or you bond it, if the lots are there, you need to have some kind of assurance.

MR. VINSON: That's what the money is to ensure that the road will be built.

MR. BRODMERKEL: I don't question you on that at all so what we can say if he'd like his money back take whatever action it is to eliminate the subdivision.

MR. NOVESKY: Yeah, I think that's one of the reasons.

MR. VINSON: That's one thing.

MR. GOLD: Or build the road.

MR. VINSON: That's what Kenn is saying, build the road.

MR. BRODMERKEL: Or take the action it takes to withdraw the subdivision.

MR. VINSON: When you combined the lots that would be an action.

MR. NOVESKY: With that, what's prohibiting us from suggesting that Mr. Blythe come and appear before the planning board and answer the questions?

MR. BRODMERKEL: I don't want to hear him.

MR. VINSON: I just got the letter today, I answered it the best I could.

MR. NOVESKY: Well, in that case, Dominic, are you recommending any action that the planning board should take on this or not?

MR. CORDISCO: Personally, I think it's a reasonable request. I think that there are safeguards that could be put into place to make sure that any future purchaser of these lots would know what they're buying and that they're buying something where the public, excuse me, the private road improvements need to be put in place or bonded prior to the issuance of the building permit.

MR. NOVESKY: Doesn't this give him the advantage of having a subdivision that supercedes the current zoning for the area and holding that hostage?

MR. CORDISCO: He already passed that, I mean, he has a subdivision now.

MR. NOVESKY: He's got a subdivision based on prior zoning, correct?

MS. DOTSON: Right.

MR. CORDISCO: Sure, lots are created now, you know, his issue really is that his money is tied up, it's \$30,000 with no prospects of being able to sell the lots.

MR. GRABE: What about giving him half his money?

MR. CORDISCO: That's certainly possible. I mean, it's a town board decision, you could recommend that.

MR. NOVESKY: The bottom line board it's a town board decision whether to return the bond. The question is what technical issues do we have, are we willing to make? Let's go through this real quick.

MR. LOBLANCO: I'd like to see what Dominic's saying having safeguards put in there so it doesn't happen what Leslie was saying in the past, I'm not really in favor of giving him back all his money without some assurances.

MR. GRABE: I'd say take half his money with the assurances.

MR. NOVESKY: We don't have the authority.

MR. CORDISCO: You could suggest it.

MR. GOLD: Dominic has come up with a reasonable

solution, I mean, you know, we're sitting on, the town is sitting on \$30,000. This guy can, may be able to use it, maybe not, if he can assure us that should he be successful in selling one or more of the parcels that the road will be built to whatever specs are existing at the time, I have no problem.

MR. BISCHOFF: Unless for the future the bond can be greater at that point too. Gary, can I ask one question? Any percentage of the road currently built or just purely the driveway?

MR. VINSON: The road is not built, \$30,000 worth is zippo is built of it.

MR. BRODMERKEL: You're indicating if I understand that it's somehow been recorded in the deeds of these lots?

MR. CORDISCO: Correct.

MR. BRODMERKEL: And the applicant would have to pay for that?

MR. CORDISCO: Correct. No, it's solely on the applicant's cost and what would happen is that a document that's called a declaration which is the owner declaring that certain conditions exist and that apply to these lots.

MR. BRODMERKEL: So anybody, and if he tried to sell all the lots to somebody, they would see that?

MR. CORDISCO: All or one of them, correct.

MR. VINSON: When I would deny them their building permit well no because but that's the issue here would be that when they come in to me for a building permit I'm going to say the road's not built and they can't stand there and scratch their head and tell me I didn't know.

MR. CORDISCO: Correct, because it would be a matter of public record.

MR. VINSON: As long as there's paperwork that I have in each file for each lot I can be more comfortable, really don't like the idea but I can be comfortable with that.

MR. NOVESKY: To be honest, I'm very uncomfortable with

it because the approvals we're given under certain conditions and zoning then changed and we're allowing him to retain and this screams of that subdivision I got called into court about, the brothers.

MS. DOTSON: Don't say it.

MR. NOVESKY: But I'm uncomfortable if the zoning changes and the approvals were given prior then that's the advantage of the zoning prior and not the disadvantage of the current zoning. I just see somebody, I'm not concerned about the people buying the lots, I'm concerned about the people next door to the lots that are purchased who are now understanding if I buy the lot next door.

MR. CORDISCO: These are currently non-conforming lots so that, and they're entitled to let's say the road was built, they're entitled to pull a building permit today without having to come back to this board because--

MR. VINSON: They have three years.

MR. NOVESKY: So if they don't do it so the approvals are null and void?

MR. CORDISCO: It would be subject to current zoning after three years.

MR. NOVESKY: How many years has it been now? When did we approve this?

MR. CORDISCO: It was 2007 but it would also depend on the time of zone change that happened.

MR. NOVESKY: When did the zone change?

MS. DOTSON: 2005.

MR. NOVESKY: Isn't this approval almost null and void?

MR. BRODMERKEL: No, it has been approved.

MR. CORDISCO: I'm not sure of the non-conforming aspect of this application.

MR. NOVESKY: I'm one of six here and but I'm still a little uncomfortable with the idea.

MR. BRODMERKEL: Can somebody make a motion as to what

they'd like to do and we can take a vote and dispose of it?

MR. NOVESKY: Absolutely.

MR. LOBLANCO: I'll make a motion that we recommend returning the money based on what Dominic said he put in some kind of declaration on the title.

MR. GOLD: I'll second it.

ROLL CALL

MR. LOBLANCO	AYE
MR. GOLD	AYE
MR. GRABE	NO
MR. BRODMERKEL	NO
MR. BISCHOFF	NO
MR. NOVESKY	NO

PUBLIC HEARINGS:

HOLLORAN ROAD PROPERTY #2012-07

MR. NOVESKY: Next we have a public hearing at 7:18, public hearing for the Holloran Road property re-subdivision of lot number 10. Seeing no one present, I'll leave the public hearing open, correct?

MR. CORDISCO: Yeah, I would make a motion to continue the public hearing to the next regular meeting of the board.

MR. GOLD: So moved.

MR. BRODMERKEL: Second it.

ROLL CALL

MR. LOBLANCO	AYE
MR. GOLD	AYE
MR. GRABE	AYE
MR. BRODMERKEL	AYE
MR. BISCHOFF	AYE
MR. NOVESKY	AYE

MR. CORDISCO: That's not necessarily the October meeting, it would be whenever the board has a next regularly scheduled meeting. For instance, if there's no other application that comes in for October then we wouldn't need to convene to have a phantom public hearing.

MR. NOVESKY: Alright, thank you, Dominic.

JONES FARM #2013-02

MR. NOVESKY: Okay, next is Jones Farm site plan amendment.

MR. J. CLEARWATER: Okay, so as was mentioned earlier, the Jones Farm has had three site plan applications and approvals which date back. First one was 1994, 2001 and then last was 2006 with various aspects of the site. What's proposed now is that there's one section of the building that was approved in 1994 and built, the existing kitchen to be moved from one portion of the building to the other side of the building which really has no, you don't need site plan approval to move a kitchen from one side of the building to the other. The sticky-wicket is that at some point we want to provide seating for upwards of 34 people. That's what triggers the appearance here. And now we can't put in seating until we have a bathroom so that's not going to happen. What we want to do is just move the kitchen right now before November and then after we get a bathroom in the main building then we can work on the seating, indoor seating, counter service, we're not opening a restaurant, that's not happening, you come up to the counter, get your coffee and doughnut and sit down.

MR. CORDISCO: Cider donuts.

MR. J. CLEARWATER: Right.

MR. NOVESKY: Best donuts in the area.

MR. J. CLEARWATER: The parking of course is based on the seats and unlike most applications that come before the board, this site has the luxury of space. We have 85 acres to create the parking that we need. And the way we have it laid out now there's adequate parking to meet the code, including the retail, including the seating for I'll call it a cafe. So that's not a problem. The septic system when we move the kitchen from one side of the building to the other the septic system has to be rebuilt. I have not designed the septic system yet. Now Mark has indicated, Mark Edsall had indicated that his office wants to be involved in the review of the design, come out, look at the septic soil tests which is fine I guess but, you know, I look at it as I'm a licensed land surveyor, my partner's an engineer, if something happens with the septic system he's going to walk across the lawn and I'm going to

hear all about it.

MR. D. CLEARWATER: And there's 85 acres for a septic, it's adequate.

MR. J. CLEARWATER: Unlike most applicants you have, create a bunch of lots, blow in from Jersey, build them and leave town and then the town ends up if there's a problem with the septic the county and the town engineer get a phone call. That's not going to happen in this case because I'm going to get the phone call. In any case, if he wants to review the septic system that's fine. And Leslie's comments about changing the zoning, I can do that, fill out a long EAF or full EAF, I'll fill that out for the next meeting. Hopefully, we can get this done.

MR. NOVESKY: Let's see how we're going to do this.

MR. D. CLEARWATER: There's no changes in the hours of operation, there's no changes in entrance egress, there's no changes in dealing with the neighbors any differently than what we're doing. The neighbors are all thrilled about it, nothing is changing with all this stuff, it's an accessory use to what we're already doing. We've been there 100 years.

MS. DOTSON: You can waive the public hearing and just put them on until next, they know what they need to do, you know.

MR. NOVESKY: Do you know what needs to be done?

MR. J. CLEARWATER: Yes.

MR. NOVESKY: The one thing I note that you said that the kitchen issue for obvious reasons has to be cleared up and done by November.

MR. J. CLEARWATER: Right.

MR. NOVESKY: What can be done in order to facilitate that without -- any suggestions?

MR. CORDISCO: Well, the board could as a board could waive public hearing.

MR. NOVESKY: Let me handle that part now.

MR. GOLD: I would move we waive the public hearing.

MR. BRODMERKEL: Second it.

ROLL CALL

MR. LOBLANCO	AYE
MR. GOLD	AYE
MR. GRABE	AYE
MR. BRODMERKEL	AYE
MR. BISCHOFF	AYE
MR. NOVESKY	AYE

MR. NOVESKY: Okay.

MR. CORDISCO: The proximity of Jones Farm to Cromwell Manor indicates that this is a Type I action under SEQRA and Leslie can speak further to this but her recommendation and I agree is that the board should require the applicant to submit a long form Environmental Assessment Form and that would complete the file as far as that's concerned.

MR. BRODMERKEL: I didn't hear the reason for that.

MR. CORDISCO: Because--

MS. DOTSON: It's a procedural error if you don't follow it this way because it's adjacent to a historic register listed property.

MR. BRODMERKEL: I didn't hear that.

MS. DOTSON: Yes.

MR. D. CLEARWATER: Does it make a difference that we're also historic, we're 100 years?

MS. DOTSON: But you're not listed.

MR. BRODMERKEL: You're not next door to you.

MR. CORDISCO: Well, you know, the thing is is that the long form is triggered, is required and procedurally this would be defective for not requiring it.

MR. NOVESKY: That's understandable.

MS. DOTSON: We haven't heard from Orange County Planning when it only went to them on Friday and with it being a holiday weekend, you know, getting that

turned around wasn't going to happen so we figured with everything outstanding because you really ought not to act without having the county weigh in because even though you can override them you need to know why you're overriding them if you are overriding them.

MR. CORDISCO: The referral was just made to the county planning.

MR. BRODMERKEL: Are you not expecting them to return information to us by next month?

MS. DOTSON: The 30 days will have run by next month.

MR. NOVESKY: We can have all the appropriate resolutions in place.

MR. CORDISCO: Yes, we'll prepare the resolutions and negative declaration based on the long form EAF that we haven't seen yet ready for the October meeting and that way the board if it's inclined can grant approval that night and they can turn around and get their building permit the following day.

MR. GOLD: So the earliest they can start is the day after the next meeting.

MR. CORDISCO: Right.

MR. D. CLEARWATER: The building permit for the kitchen we can do now, we're not asking for cafe seating.

MR. VINSON: It was my understanding because it was within the internal portion of the building.

MS. DOTSON: Right, that they can apply.

MR. NOVESKY: There's no problem with that, correct?

MR. CORDISCO: No, there's no problem with that.

MR. VINSON: I'm not going to allow him to start the exterior area.

MS. DOTSON: Correct.

MR. VINSON: For the cafe but my understanding he can go for the permit for the interior modifications.

MR. CORDISCO: Correct, I misspoke.

MR. J. CLEARWATER: What we're going to do right now is move the kitchen from one side of the building to the other, we have no bathroom for customers, for clients, we don't need it in our present operation, there's no requirement or need for it.

MR. NOVESKY: That will all be addressed in the resolution for next month.

MR. BRODMERKEL: You can start.

MR. J. CLEARWATER: Moving the kitchen tomorrow.

MR. BRODMERKEL: Or tonight if you're so inclined.

MR. D. CLEARWATER: When the building permits are in place.

MR. NOVESKY: Are we satisfied with that? Any other action?

MR. CORDISCO: No, you're waiving public hearing.

MR. NOVESKY: And we have a resolution to authorize Dominic to prepare the resolutions for next month.

MR. VINSON: All subject to the long form EAF coming in in a timely manner.

MR. CORDISCO: Yes.

MR. GOLD: So moved.

MR. BRODMERKEL: Second it.

ROLL CALL

MR. LOBLANCO	AYE
MR. GOLD	AYE
MR. GRABE	AYE
MR. BRODMERKEL	AYE
MR. BISCHOFF	AYE
MR. NOVESKY	AYE

MR. J. CLEARWATER: I'll do it tomorrow.

MR. VINSON: We can expect to have it Thursday.

MR. J. CLEARWATER: Okay.

DISCUSSION

MR. NOVESKY: One other small matter we did not address that Dominic, quick question, I'm sure this is of interest to all the board members, we approached the Nancy Lewitt letter.

MR. CORDISCO: Yes.

MR. NOVESKY: Is there anything that we need to be aware of or know, I think the letter related to--

MR. CORDISCO: Not that I can decipher. You might be referring to the Sally Benvie letter and Miss Benvie did write to Bob Freeman at the Committee on Open Government, he's a very nice fellow, writing to complain about an action that this board took I believe in 2012 where we went into a closed attorney-client session to discuss potential litigation. And she wrote and complained and as result the Committee on Open Government is hearing her complaint and is going to issue an advisory opinion on. On August 19, they wrote to the town supervisor and to Wynn Gold, the planning board chair.

MR. GOLD: I would expect that if it was Nancy Lewitt.

MR. CORDISCO: Asking if the town would like to address or provide any information to the Committee on Open Government. My recommendation if you recall we did go into a closed session, we did, it was perhaps one of the briefest closed sessions that we've ever had, only to discuss potential litigation. And if you recall without getting into the particulars of it here on the record it was potential litigation that affected the subdivision between private entities relating to the subdivision not with litigation against the town. And the reason why we discussed it is because it may affect the subdivision application which is still pending before you, although it's inactive at this time. My suggestion is if you're inclined would be to authorize your chairman to send a letter back to the Committee on Open Government explaining what I just explained to you now and confirming that you did in fact go into an attorney-client session. And I think that's all you need to say because they also, the Committee on Open Government when they wrote to you and said that they would be looking for your opinion, excuse me, for your information they attached a number of advisory opinions

all of which conclude that it's perfectly legal for the board to have advice from its counsel and to go into closed session to do so.

MR. NOVESKY: Thank you. Would the board authorize me to--

MR. GRABE: No, I've got a question. You're the one who authorized the private session that evening?

MR. CORDISCO: I had suggested it.

MR. NOVESKY: No, I authorized it.

MR. GRABE: I suggest you write the letter to them and he signs it.

MR. CORDISCO: I would be happy to do that if that's what you direct.

MR. GRABE: That's what I would suggest, you might know the right language.

MR. CORDISCO: I have no problems assisting in the writing of it. It's just from my perspective I don't think the letter should be signed by me, it should be signed by the chairman because it's--

MR. GRABE: That was my recommendation.

MR. CORDISCO: Yes.

MR. NOVESKY: Okay, may I have a motion?

MR. BRODMERKEL: So moved.

MR. GOLD: Second it.

ROLL CALL

MR. LOBLANCO	AYE
MR. GOLD	AYE
MR. GRABE	AYE
MR. BRODMERKEL	AYE
MR. BISCHOFF	AYE
MR. NOVESKY	AYE

MR. CORDISCO: We'll get you a letter.

MR. NOVESKY: With that, I think a motion to adjourn.

Any other questions?

MR. VINSON: I'm going to get ready to prepare the agenda for next year, the dates and stuff, October, November, you're not going to have meetings then I don't think, I mean, two items tonight, you only had two applications all year. So coming again July next year or September, do you care like Tuesday after the holiday, long weekend?

MR. NOVESKY: Anybody care? Nobody cares.

MR. BRODMERKEL: Are you asking? We don't want to do it.

MR. VINSON: Just trying to give you the opportunity to think about it for input.

MR. NOVESKY: You did a great job the year before, the year before, the year before and the year before.

MR. VINSON: I'll just do it the same way, no problem.

MR. NOVESKY: With that, I'll take a motion to adjourn.

MR. GOLD: So moved.

MR. BISCHOFF: Second it.

ROLL CALL

MR. LOBLANCO	AYE
MR. GOLD	AYE
MR. GRABE	AYE
MR. BRODMERKEL	AYE
MR. BISCHOFF	AYE
MR. NOVESKY	AYE

Respectfully Submitted By:

Frances Roth
Stenographer